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Attorney for Plaintiff  
Hao Xu

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

**Hao Xu**

Plaintiff,

v.

**Alberto Gonzales**, United States Attorney  
General, U.S. Department of Justice;  
**Michael Chertoff**, Secretary of the  
Department of Homeland Security;  
**Emilio T. Gonzalez**, Director of United States  
Citizenship and Immigration Services;

Defendants

Case No. C 07-3383 PVT

**JOINT CASE MANAGEMENT  
STATEMENT; AND [PROPOSED]  
ORDER**

**1. Jurisdiction and Service**

The basis asserted by Plaintiff for this Court's jurisdiction is 28 U.S.C. § 1361, 28 U.S.C. § 1331, and 5 U.S.C. §§ 551, 702. The parties do not dispute that venue is proper in this district. No issues exist regarding personal jurisdiction or venue, and no parties remain to be served.

**2. Facts**

Plaintiff is a native of China who applied to adjust his status to lawful permanent residence with the United States Citizenship and Immigration Services (USCIS) on July 13, 2004. The USCIS

has yet to adjudicate Plaintiff's I-485 application. The plaintiff filed an action, through counsel, on June 27, 2007, seeking an order from this Court directing USCIS to adjudicate his I-485 application.

### **3. Legal Issues**

1. Whether this Court should dismiss the plaintiff's action for failure to state a claim and for lack of subject matter jurisdiction.

2. Whether the delay in the adjudication of Plaintiff's I-485 application is unreasonable.

### **4. Motions**

No motions have been filed. The parties intend to file cross-motions for summary judgment.

### **5. Amendment of Pleadings**

No parties, claims or defenses are expected to be added or dismissed.

### **6. Evidence Preservation**

The parties do not have any evidence that falls within this category.

### **7. Disclosures**

The parties believe that review will be confined to the administrative record and thus the disclosure requirements of Fed. R. Civ. P. 26 do not apply.

### **8. Discovery**

The parties do not intend to take any discovery in this case.

### **9. Class Actions**

N/A

### **10. Related Cases**

The parties are not aware of any related case or cases.

### **11. Relief**

The plaintiff asks this Court to direct the USCIS to adjudicate his I-485 application forthwith.

### **12. Settlements and ADR**

On September 12, 2007, the parties filed a request to be excused from the formal ADR process for this case.

### **13. Consent to Magistrate Judge for All Purposes**

The parties shall or have already consented to proceed before a Magistrate Judge.

**14. Other References**

The parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

**15. Narrowing of Issues**

The parties do not believe that the issues can be narrowed by agreement or by motion, and do not have suggestions to expedite the presentation of evidence at trial, and any request to bifurcate issues, claims or defenses.

**16. Expedited Schedule**

The parties believe this case can be resolved on cross motions for summary judgment.

**17. Scheduling**

The parties will notice and move for summary judgment with the following proposed due dates:

Parties' cross-motions for summary judgment:	October 16, 2007
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Parties' opposition motions:	October 30, 2007
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The Parties respectfully request that the Court take this matter under submission based on the above motions and that no summary judgment hearing be held for this case. Should the Court deem that a hearing is necessary, the parties propose a summary judgment hearing date of November 20, 2007.

**18. Trial**

The parties do not anticipate the need for a trial in this case.

**19. Disclosure of Non-Party Interested Entities or Persons**

The parties filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

**20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter**

None.

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1 Dated: September 25, 2007

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Justin G. Fok  
Law Offices of Jean D. Chen  
Attorney for Plaintiff  
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6 Dated: September 25, 2007

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Ila C. Deiss  
Assistant United States Attorney  
Attorney for Defendants  
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13 **ORDER**

14 The Case Management Statement and Proposed Order are hereby adopted as the Case  
15 Management Order for the case and the parties are hereby ordered to comply with this order.  
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18 Dated: \_\_\_\_\_

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Patricia V. Trumbull  
United States Magistrate Judge  
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